IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.2902 OF 2006

Premier Ltd. ...Petitioner.

Vs.

The PAL VRS Employees' Welfare Association & Anr. ...Respondents.

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Mr.P. Ramaswamy with Mr. T. S. Shetty & Mr. Santosh Shetty for the Petitioner.

Mr. I.A. Sayed with Mr. M. A. Mulani or Respondent No.1

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CORAM : DR.D.Y.CHANDRACHUD, J.

November 29, 2006.

P.C.

Rule, by consent of Counsel returnable forthwith. Counsel appearing on behalf of the First Respondent waives service. By consent of Counsel and at their request taken up for hearing and final disposal.

2. The Petitioner was engaged in the manufacture and sale of automobiles and accessories at its factory which was then located at Kurla. In or about the end of 1991, the Petitioner employed about 6000 workmen who were represented at the material time by the Association of Engineering Workers. On

account of a recession in the automobile industry, the Petitioner announced two schemes for voluntary retirement on 20th December 1991 and 24th March 1992. The First Respondent who represents about 926 ex-workmen was formed and registered in 1995 as a society under the Societies' Registration Act, 1860. The Association has also been registered under the Bombay Public Trusts Act, 1950. The Association of Engineering Workmen (AEW) had submitted a Charter of Demands on 24th April 1991, seeking a wage revision with effect from 1st January 1991. On 8th September 1994, a settlement was arrived at in the course of conciliation with the Association of Engineering Workmen effective from 1st July 1994.

3. The grievance of the Respondent-Association is that despite a representation that was held out to the workmen in the scheme for voluntary retirement, the management did not give to the workmen who had opted for Voluntary Retirement under the Schemes the benefit of the subsequent settlement dated 8th September 1994. The First Respondent initially filed an application under Section 33C(2) of the Industrial Disputes Act, 1947, claiming the benefit of clause (16) of the Settlement dated 8th

September 1994, placing reliance on the representation that was held out in clause (9) of the Voluntary Retirement Schemes. The Labour Court allowed the application on 20th January 1998. On 3rd October 2001, a Learned Single Judge of this Court set aside the order of the Labour Court. The order of the Learned Single Judge was upheld in appeal by the Division Bench in **PAL VRS Employees' Welfare Association vs. Premier Automobiles Ltd.**[1] While confirming the judgment of the Learned Single Judge, the Division Bench held as follows :

> "In the instant case, the settlement dated 8th September 1994 on the basis of which claim has been preferred specifically and unambiguously provides that the benefits arising out of the settlement dated 8th September 1994, would be available to the workmen who were on the rolls of the Company as on 1st July 1994. Thus, the settlement dated 8th September, 1994 does not confer any right on the members of the appellant.
>
> As far as clause 9 of the Voluntary Retirement Scheme is concerned, it merely provides that in case there is settlement in the future, the employees opting V.R.S. will also be entitled to pro-rata arrears for the period upto 27th January 1992 arising out of such settlement. It is thus clear that there is no existing right in the employees to claim the additional amount in accordance with the settlement dated 8th September, 1994. The Labour Court had clearly exceeded jurisdiction in granting the claim of the association. The Learned Single Judge was therefore, justified in setting aside the said order of the Labour Court."

1 2002 II CLR 645

However, while dismissing the Appeal, the Division Bench clarified that this would not preclude the Association from raising an industrial dispute if permissible in law.

4. The First Respondent thereupon raised an industrial dispute and the following dispute was referred to adjudication by the State Government to the Industrial Tribunal under Section 10 of the Industrial Disputes Act, 1947:

> "Whether the workmen, whose names are mentioned in the ANNEXURE, who during the pendency of Settlement of Charter of Demand dated 24.04.1991, submitted by the Association of Engineering Workers, have Voluntarily Retired pursuant to the Voluntary Retirement Schemes dated 20.12.1991 modified by the Management of Premier Automobiles Ltd., Mumbai are entitled to receive the benefits of Sub-clause 1 to 5 of Clause II of the Settlement dated 08-09-94, read with clause 9 of the Voluntary Retirement Schemes dated 20.12.1991 and 24.03.1992."

5. By its award of 6th July 2006, the Tribunal held that the workmen who had opted for voluntary retirement would be entitled to the benefit of the allowances spelt out in sub-clauses 1 to 5 of Clause II of the Settlement of 8th September 1994 upto the date of voluntary retirement. Interest has been provided at the rate of 6% per annum.

6. On behalf of the Petitioner, the award of the Tribunal has been challenged on two grounds. The first challenge is that the employees whose claim was espoused by the Association are not workmen within the meaning of Section 2(s) and consequently there was no industrial dispute that could be referred to adjudication. The second submission was that in any event the terms of reference were confined to whether the workmen who had taken voluntary retirement were entitled to receive the benefit of Sub-clauses 1 to 5 of Clause II of the Settlement dated 8th September 1994. Ex-facie, it was submitted, the settlement dated 8th September 1994 did not apply to workmen who had already taken voluntary retirement. On the other hand, Counsel appearing on behalf of the First Respondent relied on the definition of expression “industrial dispute” in Section 2(k) and the expression “workman” in Section 2(s) to support the submission that an industrial dispute was validly raised. Learned Counsel urged that under Section 2(s), for the purposes of any proceedings under the Act in relation to an industrial dispute, a workman includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of that dispute. It was emphasised that the words “discharged”, “dispute”, “in connection”

or “as a consequence of” the dispute are of a wide significance. Secondly, on merits, it was submitted that in view of the provisions of clause (9) of the Scheme for Voluntary Retirement, the award of the Industrial Tribunal is perfectly valid and justifiable.

7. In appreciating the submission that has been urged on behalf of the Petitioner and in the defence, it would be necessary to refer to Clause (9) of the Voluntary Retirement Schemes which was to the following effect :

> “Employees opting for VRS will also be eligible for pro-rata arrears payments for the period upto 27th January 1992 arising out of any settlement reached hereafter. Those separated under VRS before 27th January 1992 will also be eligible for this. However, this will have no effect on the lump sum/pension amount arrived at on the basis of the formula as mentioned under clause S of the 'Scheme'.”

8. The Settlement that the management entered into with the Association of Engineering Workers on 8th September 1994 noted in its preamble that the Company had closed down its Wadala Unit and about 2800 workmen from the three Units at Wadala, Kurla and Kalyan had opted for voluntary retirement on account of a reduction in incentive during the recession in the

automobile industry. The settlement had been delayed causing dissatisfaction on the part of the workmen. On the other hand, the management had put forth requirements in respect of productivity, modernization and, what was termed as “relayout” of machinery and equipment which was necessary for introducing new models and product mixes and flexibility in the redeployment of manpower. Clause (i) of the Settlement provides that the purpose of the settlement was to promote and improve Industrial Relations between the Company and the workmen. Clause (ii) contains bilateral assurances between the management and the workmen in the following terms:

> “ii. The company will take all necessary measures to provide regularly sufficient quantity and good quality of raw-material, manpower, required machinery, proper maintenance of machines etc. and the workmen and union will give co-operation to the company in introduction/maintenance of new products, introduction of new technology, relayout of machinery, adjustment of manpower and introduction of new models/make of cars without adversely affecting the interest of the workmen and this will be done after discussion and in consultation with the union.”

The Union agreed on behalf of the workmen in Clause (iii) that since the Plants at Kurla and Kalyan were interdependent, the workmen would cooperate in maintaining production at Kalyan.

Clause (I) of the settlement contains the following assurances in the matter of productivity:

> "I) PRODUCTIVITY
>
> The company wants more production from present 66 (sixty six) Premier Padmini Cars per shift to 75 (seventy five) Premier Padmini cars per shift which will be either Petrol or Diesel or both as per the requirements of the market.
>
> The workmen will co-operate and make all efforts to increase the production upto 75 (seventy five) Premier Padmini cars per shift and proportionate spares and body shells and the company will supply proper raw material, and/or adjust manpower by mutual discussion with the Union."

The settlement provided in several clauses that it was with effect from 1st July 1994. The allowances which were provided in Clause II of the Settlement award were provided with effect from 1st July 1994. Among the allowances Leave Travel Assistance, Special Allowance, Education Allowance, Medical Reimbursement and Social Security Allowance were all provided with effect from 1st July 1994. By clause (16) of the Settlement, an additional payment was provided to all permanent workmen who were on the rolls on the date of the signing of the Settlement. Clause V provided that the settlement shall be deemed to have come into force from 1st July 1994 and shall remain binding on both the parties till 31st

December 1994.

9. These clauses of the Settlement make it abundantly clear that the settlement was a result of negotiations between the AEW and the Management and in the course of arriving at the settlement, the management while conceding to the demands of the workmen in certain respects, exacted compliance with the requirements of the management to achieve standards of productivity for an efficient industrial enterprise. The Union agreed to give cooperation to the management for the introduction of new products and new technology. The Union similarly agreed to cooperate with the management in the “relayout” of machinery, adjustment of manpower and introduction of new models of automobiles without adversely affecting the interests of the workmen. In a bilateral settlement of this nature, it is impossible to divorce the conditions of productivity and proper work ethics from the benefits that were conferred. A settlement has to be read as a composite whole. No individual elements of a settlement can be read in isolation. There is merit in the submission that has been urged on behalf of the management that the clauses of the settlement relating to productivity, redeployment of machinery and

manpower and the co-operation that was to be extended in introducing new models could not possibly apply to workmen who had already taken voluntary retirement. The settlement dated 8th September 1994 could not, therefore, be applied to the workmen who had already taken voluntary retirement prior to the date of the settlement by lifting certain clauses of the settlement, namely, those relating to allowances contained in Clause II (sub-clauses 1 to 5) in isolation from the other aspects of the settlement.

10. The Tribunal, in the course of its award held that there was a breach of the understanding or of the assurances that were held out to the workmen in Clause (9) of the Voluntary Retirement Schemes, since the assurance that was contained therein was that the workmen taking voluntary retirement would be eligible *pro-rata* for the payment of arrears upto 27th January 1992 (16th April 1992 under the subsequent scheme). The terms of reference before the Tribunal were whether the workmen were entitled to the benefit of sub-clauses 1 to 5 of clause II of the Settlement in view of the provisions of clause (9) of the Voluntary Retirement Schemes. The answer to that would have to be in the negative since *ex-facie* the settlement applied only with effect from 1st July 1994. The

settlement *inter alia* contained provisions in regard to productivity which would obviously apply to the existing workmen.

11. The terms of reference were confined to whether the workmen who had taken voluntary retirement under the scheme notified by the management during the pendency of the Charter of Demands dated 24th April 1991 were entitled to the benefits of sub-clauses 1 to 5 of Clause II of the Settlement dated 8th September 1994. The reference as it stands would have to be answered in the negative for the reasons already indicated hereinabove. Since the Court has come to the conclusion that the award of the Tribunal on merits is unsustainable, it has not become necessary to express any final view on the maintainability of the reference. Confronted with this difficulty and with the restrictive terms of reference before the Industrial Tribunal, Counsel appearing on behalf of the First Respondent sought liberty either to move the appropriate Government for modification of the existing terms of reference or, as the case may be, by raising a fresh demand and a fresh reference to adjudication. This suggestion on the part of the Counsel appearing on behalf of the First Respondent has not been opposed by Counsel appearing on behalf of the Petitioner.

In this view of the matter, it will not be necessary for the Court to express any view on the question with regard to the maintainability of the reference which is kept open to be urged before the Tribunal in appropriate proceedings.

12. Hence, the following order is passed :

-(a) The impugned award of the Industrial Tribunal dated 26th July 2006 is quashed and set aside.

-(b) This will not preclude the First Respondent either from raising a fresh demand before the appropriate Government or seeking a modification of the existing terms of reference before the Tribunal.

-(c) All the rights and contentions of the parties both on merits and with regard to the maintainability of the reference are kept open.

-(d) The petition is accordingly disposed of. There shall be no order as to costs.

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